

Joshua Carver
August 29, 2024

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 2:23-cv-4102

- - -

DEREK J. MYERS, ET AL.,

plaintiffs,

V.

PIKE COUNTY, ET AL.,

defendants.

DEPOSITION OF JOSHUA CARVER

The deposition of Joshua Carver was taken on
Thursday, August 29th, 2024, at 1:22 p.m., at the
Pike County Government Center, 230 Waverly Plaza,
Waverly, Ohio.

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<p style="text-align: right;">Page 2</p> <p>1 ON BEHALF OF THE PLAINTIFFS:</p> <p>2 Marc D. Mezibov, Esquire (via Zoom)</p> <p>3 Mezibov Butler</p> <p>4 615 Elsinore Place, Suite 105</p> <p>5 Cincinnati, Ohio 45202</p> <p>6 mmezibov@mezibov.com</p> <p>7 Emmett E. Robinson, Esquire</p> <p>8 Robinson Law Firm LLC</p> <p>9 6600 Lorain Avenue, Suite 731</p> <p>10 Cleveland, Ohio 44102</p> <p>11 erobinson@robinsonlegal.org</p> <p>12</p> <p>13 ON BEHALF OF THE DEFENDANTS:</p> <p>14</p> <p>15 Cassaundra L. Sark, Esquire</p> <p>16 Lambert Law Office, LLC</p> <p>17 215 South 4th Street</p> <p>18 Ironton, Ohio 45638</p> <p>19 csark@lambert-law.org</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22</p> <p>23 Derek Myers (via Zoom)</p> <p>24</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 EXAMINATION PAGE</p> <p>3 Mr. Robinson 4</p> <p>4</p> <p>5</p> <p>6 EXHIBITS PAGE</p> <p>7</p> <p>8 Exhibit 14 10</p> <p>9 Exhibit 15 14</p> <p>10 Exhibit 16 19</p> <p>11 Exhibit 17 40</p> <p>12</p> <p>13 Stenographer's Certificate 51</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 - - -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 4</p> <p>1 JOSHUA CARVER,</p> <p>2 being by me first duly sworn, as hereinafter</p> <p>3 certified, deposes and says as follows:</p> <p>4 EXAMINATION</p> <p>5 By Mr. Robinson:</p> <p>6 Q. Good afternoon, Lieutenant Carter.</p> <p>7 A. Carver.</p> <p>8 Q. Carver. I'm sorry. And it is lieutenant</p> <p>9 now; right?</p> <p>10 A. Yep.</p> <p>11 Q. Have you been deposed before?</p> <p>12 A. Not in years.</p> <p>13 Q. Okay. So I'll go over some of the basic</p> <p>14 ground rules that are -- I don't do this very often</p> <p>15 either. So good for me to remember too. One is we</p> <p>16 got to try not to talk over each other. And I have a</p> <p>17 bad habit of talking, you know, conversationally when</p> <p>18 I get into these, and I talk too fast for the court</p> <p>19 reporter. So we'll try to not talk over one another</p> <p>20 and try to speak somewhat slowly. That would be</p> <p>21 great.</p> <p>22 Your counsel, you know, is free to raise</p> <p>23 objections to any question I ask. Generally after</p> <p>24 she objects, you still have to answer unless she</p>	<p style="text-align: right;">Page 5</p> <p>1 instructs you not to answer. So generally that's</p> <p>2 just if there's attorney-client privilege, which I</p> <p>3 don't anticipate will be happening here. But just so</p> <p>4 you know that.</p> <p>5 It's best to give audible answers. So,</p> <p>6 you know, affirmative "yes" or affirmative "no."</p> <p>7 Just like in court. Because, obviously, the court</p> <p>8 reporter can't pick up head nods and "huh-uhs" or</p> <p>9 "uh-huhs" very well, even though she has to put that</p> <p>10 one in there now, I guess.</p> <p>11 Can you please tell me where you work?</p> <p>12 A. For the Pike County's Sheriff's Office.</p> <p>13 Q. And how long have you worked there?</p> <p>14 A. Since October of 2016.</p> <p>15 Q. And you said that you are currently a</p> <p>16 lieutenant; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. When did you receive that promotion?</p> <p>19 A. Beginning of -- well, December, I think,</p> <p>20 of last year.</p> <p>21 Q. Okay. And then you were a sergeant</p> <p>22 before that; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. How long were you a sergeant, if you can</p>

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<p style="text-align: right;">Page 6</p> <p>1 remember?</p> <p>2 A. Year, year and a half, maybe.</p> <p>3 Q. Okay. And as a lieutenant, where do you</p> <p>4 fall in the pecking order? Let me rephrase that.</p> <p>5 How many other lieutenants are there?</p> <p>6 A. Two other lieutenants.</p> <p>7 Q. And directly above you your supervisor</p> <p>8 would be the captain; is that right?</p> <p>9 A. Technically, yes.</p> <p>10 Q. Technically. Okay. What makes you</p> <p>11 hesitate there?</p> <p>12 A. I currently run our corrections division.</p> <p>13 Q. Okay.</p> <p>14 A. So I report, basically, to the chief</p> <p>15 deputy at this point.</p> <p>16 Q. To the chief deputy. And could you tell</p> <p>17 me what his name is?</p> <p>18 A. Chris Jones right now.</p> <p>19 Q. And previously it was Mr. Dixon; is that</p> <p>20 right?</p> <p>21 A. James Dixon.</p> <p>22 Q. James Dixon. And, of course, the chief</p> <p>23 deputy reports to the sheriff; is that right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. So I want to start out with -- I</p> <p>2 think most of this will be pretty basic. But I just</p> <p>3 want to make sure that we agree where we agree and</p> <p>4 disagree where we disagree. So I wanted to show you</p> <p>5 this document. The numbering's going to be confusing</p> <p>6 because I'm going to try to use the same numbering as</p> <p>7 this morning to make it easier for our court</p> <p>8 reporter. But this is going to be Exhibit No. 9.</p> <p>9 And could you tell me what that document is?</p> <p>10 A. It is part of our incident report forms.</p> <p>11 Q. And can you tell me who the suspect is on</p> <p>12 this form?</p> <p>13 A. It is Derek Joel Myers -- Myers. Sorry.</p> <p>14 Q. Now, I have some very basic questions</p> <p>15 about this just to make sure I understand how it</p> <p>16 works. So see up top in the administrative box</p> <p>17 you've got a "TOD" there and then a date. Do you</p> <p>18 know what that "TOD" stands for?</p> <p>19 A. "Time of dispatch" or time it was</p> <p>20 provided.</p> <p>21 Q. Okay. Okay. And that says October 28th,</p> <p>22 2022; right?</p> <p>23 A. Uh-huh.</p> <p>24 Q. And it says 17:59. So 5:59 p.m.?</p>
<p style="text-align: right;">Page 8</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. And then the "TOA" in the next</p> <p>3 box, what does that mean?</p> <p>4 A. "Time of arrival."</p> <p>5 Q. Oh, okay. So the TOD is that basically</p> <p>6 when you receive notice of the offense or the alleged</p> <p>7 offense or however you want to put it?</p> <p>8 A. It's the time that I notified or someone</p> <p>9 notified dispatch of that offense.</p> <p>10 Q. Okay. And then time of arrival would be</p> <p>11 when you -- this is a strange situation I realize</p> <p>12 because it's not like you're going somewhere to</p> <p>13 respond to an emergency or something.</p> <p>14 A. Right.</p> <p>15 Q. But when you, I guess, actively take on</p> <p>16 the case for lack of a better word?</p> <p>17 A. It's when they actively start to put it</p> <p>18 into the computer or it's logged in with our office</p> <p>19 that way.</p> <p>20 Q. Okay. And then -- so the next one is</p> <p>21 "TOC." What's that one?</p> <p>22 A. "Time of clearance."</p> <p>23 Q. Okay. And what does that mean?</p> <p>24 A. The time that this report through</p>	<p style="text-align: right;">Page 9</p> <p>1 dispatch has been cleared.</p> <p>2 Q. Put together?</p> <p>3 A. Cleared with them.</p> <p>4 Q. Okay. Okay.</p> <p>5 A. Yeah.</p> <p>6 Q. So who would have put this report</p> <p>7 together initially?</p> <p>8 A. This initial one would be me.</p> <p>9 Q. Okay. And then there's a -- on Page 2</p> <p>10 there are two narrative boxes. You see that?</p> <p>11 A. Uh-huh. Sorry. Yes.</p> <p>12 Q. The first narrative -- good job. I</p> <p>13 didn't catch that. The first box has a narrative</p> <p>14 date of October 28th, 19:26; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. So 7:26 p.m.?</p> <p>17 A. Yes.</p> <p>18 Q. And it says "Joshua Carver." So you</p> <p>19 would have done that sentence of narrative right</p> <p>20 above that; right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Same deal with the one below that.</p> <p>23 That came a lot later, December 19 of '23; right?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. And you are the author on that one</p> <p>2 right -- as well; right?</p> <p>3 A. It looks so. Yes.</p> <p>4 Q. Sure. Take your time and read over it if</p> <p>5 you want.</p> <p>6 Okay. So you're comfortable saying that</p> <p>7 you're the author of that one?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Okay. Let's keep this out but kind of</p> <p>10 put it to the side. I'm going to ask you to juggle a</p> <p>11 couple different papers at once. So next one I know</p> <p>12 you've seen but it's probably a long time. And I'll</p> <p>13 mark this as Exhibit 14.</p> <p>14 - - -</p> <p>15 (EXHIBIT NO. 14 WAS MARKED.)</p> <p>16 - - -</p> <p>17 Q. I'm sorry. I'm going to switch you out.</p> <p>18 And I'll represent to you that Exhibit 14 is a</p> <p>19 printout of an article printed on the -- from the</p> <p>20 Scioto Valley Guardian News website. Does it look</p> <p>21 like it's that to you from what you can see here?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And the author on the byline is</p> <p>24 Derek Myers; is that right?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. And the date is October 28th, 2022; is</p> <p>3 that right?</p> <p>4 A. All right.</p> <p>5 Q. It's in tiny print right next to his name</p> <p>6 on the -- right on there --</p> <p>7 A. Oh, yeah. The bifocals are getting</p> <p>8 worse, but yes.</p> <p>9 Q. Okay. You have seen this article before;</p> <p>10 is that right? Maybe not in a printed form but in an</p> <p>11 electronic form?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Could you tell me about how you</p> <p>14 came to learn that this article existed?</p> <p>15 A. I had a verbal contact from an individual</p> <p>16 that asked me if I had seen and heard the information</p> <p>17 that had been posted on the Scioto Valley Guardian.</p> <p>18 Q. Okay. And who was that individual?</p> <p>19 A. At that time it was a family member of</p> <p>20 mine.</p> <p>21 Q. Okay. Did that family member work for</p> <p>22 the sheriff's department?</p> <p>23 A. No.</p> <p>24 Q. Was he or she employed by any arm of the</p>
<p style="text-align: right;">Page 12</p> <p>1 Pike County government?</p> <p>2 A. No.</p> <p>3 Q. Was it an immediate family member?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. Not in-house family member, if that's</p> <p>7 what you mean. It was a -- it was my parents.</p> <p>8 Q. Okay.</p> <p>9 A. They were proud because my picture was in</p> <p>10 the article.</p> <p>11 Q. Very nice. Which one are you there?</p> <p>12 A. Yes.</p> <p>13 Q. Oh, you're covered by that thing on the</p> <p>14 printout?</p> <p>15 A. Yeah. But that's just it. They were --</p> <p>16 Q. Got it. So that was published on</p> <p>17 October 28th; right?</p> <p>18 A. Yes.</p> <p>19 Q. And this incident report, likewise, you</p> <p>20 put this together on October 28th as well; right?</p> <p>21 A. Yes.</p> <p>22 Q. So presumably right after or shortly</p> <p>23 after you found out about this article, you put</p> <p>24 together this incident report; is that right?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And I would ask you to look at the</p> <p>3 second page of the article, the second paragraph.</p> <p>4 Sorry this print is small. But it starts out and it</p> <p>5 says, "Jake Wagner chose not to be video or audio</p> <p>6 recorded by the news media"; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And as far as you know, that's correct,</p> <p>9 isn't it?</p> <p>10 A. Yes.</p> <p>11 Q. And there was a court order in place that</p> <p>12 the media could not audio or video record if a</p> <p>13 witness objected to that; is that correct?</p> <p>14 A. And there was a court order prior to that</p> <p>15 that none of it can be done, but yes. Jake also</p> <p>16 signed his release stating he did not want his</p> <p>17 recorded.</p> <p>18 Q. Okay. And then if we could look at the</p> <p>19 next paragraph, it says "The Guardian received a</p> <p>20 portion of Jake Wagner's testimony on his first day</p> <p>21 on the witness stand. The Guardian wants to disclose</p> <p>22 that the audio was not recorded by a media of the</p> <p>23 media and was submitted to the Guardian's newsroom by</p> <p>24 a courthouse who is authorized to have their cell</p>

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<p style="text-align: right;">Page 14</p> <p>1 phone in the room."</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So if you could hold onto that</p> <p>5 article but kind of put it to the side for a second.</p> <p>6 Pull out one more exhibit. This will be the last one</p> <p>7 that I'll ask you to like at simultaneously. So this</p> <p>8 will be Exhibit 15.</p> <p>9 - - -</p> <p>10 (EXHIBIT NO. 15 WAS MARKED.)</p> <p>11 - - -</p> <p>12 Q. And this is just a copy of the Ohio</p> <p>13 Revised Code section at issue. So I'll mark it here.</p> <p>14 If you look down at A3, that statute. I guess let's</p> <p>15 go up to the top. Letter A says, "No person shall</p> <p>16 purposely do any of the following." Down to Number</p> <p>17 3, it says, "Use or attempt to use the contents of a</p> <p>18 wire, oral, or electronic communication."</p> <p>19 So let's stop there. So the use at issue</p> <p>20 here, I'm assuming, would be the publication of this</p> <p>21 article with the audio attached to it; is that right?</p> <p>22 A. It would be the use of the wire</p> <p>23 recording.</p> <p>24 Q. Right. No trick there.</p>	<p style="text-align: right;">Page 15</p> <p>1 A. I wouldn't say publication. It's -- he</p> <p>2 used the recording.</p> <p>3 Q. Right. Okay. So that's one element of</p> <p>4 it. And it also says "Knowing or having reason to</p> <p>5 know that the contents were obtained through</p> <p>6 interception of a wire or electronic communication in</p> <p>7 violation of" -- and then it lists specific sections</p> <p>8 of the revised code; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And so your position would be, I believe,</p> <p>11 not trying to put any words in your mouth, correct me</p> <p>12 if I'm wrong, that's satisfied here because he used</p> <p>13 this recorded via publishing it. And it was the --</p> <p>14 whoever initially recorded it obtained it in</p> <p>15 violation of the court order; is that right?</p> <p>16 A. There you -- yes.</p> <p>17 Q. So those are the two elements. Okay. So</p> <p>18 if we go back to your first document here, the</p> <p>19 incident report. Again, this is all basic. I'm not</p> <p>20 trying to play stupid. I just want to make sure that</p> <p>21 we're all on the same page so far. So if we look on</p> <p>22 the offense block here. Offense. And you have it</p> <p>23 listed here -- so this is a section of the revised</p> <p>24 code; is that right?</p>
<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. And it's 2933.52A3; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And does that correspond with the section</p> <p>5 of the revised code that we just looked at?</p> <p>6 A. Yes.</p> <p>7 Q. And that in turn corresponds with the</p> <p>8 elements as you saw them or believed you saw them in</p> <p>9 the Scioto Valley Guardian article at issue; right?</p> <p>10 A. In one of his places that he posted it,</p> <p>11 yes.</p> <p>12 Q. Sure. Sure. And so I should say I'm not</p> <p>13 suggesting that this was necessarily the only</p> <p>14 instance of a purported A3 violation. So when you</p> <p>15 say elsewhere, what do you mean?</p> <p>16 A. He also posted it on his personal</p> <p>17 website.</p> <p>18 Q. Okay.</p> <p>19 A. And on his Facebook page.</p> <p>20 Q. Okay. And looking back at Exhibit 9, the</p> <p>21 incident report, next to that offense description --</p> <p>22 I'm sorry -- just the offense enumeration of 52A3.</p> <p>23 The offense description says the general name of the</p> <p>24 statute; right? "Interception of wire or oral</p>	<p style="text-align: right;">Page 17</p> <p>1 communication." Then it has a specific violation</p> <p>2 here; right? "Purposely disclosed content"?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 MR. ROBINSON: Can we go off the record</p> <p>6 for just a minute.</p> <p>7 (Recess taken.)</p> <p>8 By Mr. Robinson:</p> <p>9 Q. All right. Lieutenant Carver, just one</p> <p>10 or two more questions for you on this incident</p> <p>11 report. So also in the offense block we've got kind</p> <p>12 of a subsection here that says "Type of criminal</p> <p>13 activity"; right? Do you see that about halfway down</p> <p>14 on the right?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And you have the type listed as</p> <p>17 "possessing, concealing, and using or consuming"; is</p> <p>18 that right?</p> <p>19 A. Uh-huh.</p> <p>20 Q. I'm assuming again, correct me if I'm</p> <p>21 wrong, the theory being that he possessed the</p> <p>22 recording when he published it online in these</p> <p>23 different contexts; right? Is that right?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. And then by the same token, when he put 2 it on the Guardian or on his Facebook page, he was 3 using the recording as well; right? 4 A. Yes. 5 Q. Okay. So is it fair to say that the 6 incident report was the first document that was 7 created regarding this investigation? 8 A. It was started then, yes. 9 Q. Okay. But the narrative -- second 10 narrative was added much later; right? 11 A. Yes. 12 Q. But the rest of it would have been done 13 at that time? 14 A. It would have been done near that time. 15 Q. Okay. All right. I'm going to hand you 16 what I have marked as Exhibits 2 and 3. Exhibit 2 is 17 the first page. Could you -- did it again. I gave 18 you the wrong copy. Could you tell me what that 19 document is? 20 A. It is an affidavit warrant for probable 21 cause. 22 Q. For what kind of action? Can you tell 23 here? Like, is it an arrest warrant? Is it a 24 seizure warrant?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. It's an arrest warrant. 2 Q. Okay. And then Exhibit 3 is the next 3 page of that. And could you tell me what that is? 4 A. That is the probable cause affidavit for 5 the arrest warrant. 6 Q. And whose signature is the affiant on 7 Exhibit 3? 8 A. That would be mine. 9 Q. And the date on that is October 31st; is 10 that right? 11 A. Yes. 12 Q. And then if we go back to Exhibit 2, the 13 first page, the service date is November 1st; is that 14 right? 15 A. Yes. 16 Q. Okay. So I think I understand this, but, 17 again, I just want to make sure that I do. When 18 you -- let me back up. Let me pull up another 19 document. This will be Exhibit 16. 20 - - - 21 (EXHIBIT NO. 16 WAS MARKED.) 22 - - - 23 Q. Could you tell me what that is? 24 A. It is another complaint.</p>
<p style="text-align: right;">Page 20</p> <p>1 Q. And who is the signatory on that 2 complaint? 3 A. That would be me. 4 Q. And what's the date on it? Way down at 5 the bottom. 6 A. October -- well, October 31st. 7 Q. Of what year? 8 A. 2022. 9 Q. And who is the complaint against? 10 A. Derek Joel Myers. 11 Q. And it is for violation of what section 12 of the revised code? 13 A. 2933.52A3. 14 Q. All right. Now, could you help me 15 understand -- we have three related documents here. 16 So we have the criminal complaint, the affidavit of 17 probable cause for the arrest, and the arrest 18 warrant. So in what order would these documents have 19 been created? 20 A. I don't know what order. Well, what 21 number -- letter are we here? 22 Q. That is Number 16. Let me put it on 23 there for you. 24 A. All right. Number 16 and 3 would be</p>	<p style="text-align: right;">Page 21</p> <p>1 completed together. 2 Q. Okay. So you do those, roughly, at the 3 same time? 4 A. I do one right after the other. 5 Q. Okay. Any particular order there or not 6 really? 7 A. Normally 3 then 16. 8 Q. Okay. So let's look at 3 first. 9 A. But each officer can interchange which 10 one they do first. 11 Q. Sure. No specific rule there; right? 12 Just whatever -- 13 A. No. They're done at the same time. 14 Q. Okay. So let's look real quickly at the 15 affidavit of probable cause for arrest, Exhibit 3. 16 So here the section at issue is Section 2933.52A3; is 17 that right? 18 A. Yes. 19 Q. And that's the same as the section that 20 you put on the incident report; right? 21 A. Got to forgive me. The print is small. 22 Yep. Yes. 23 Q. And it's also the statute that we looked 24 at a minute ago; right?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. And the second paragraph of the affidavit</p> <p>3 of probable cause, it starts out, "On Friday,</p> <p>4 October 28th, 2022, at around 12:39 hours I was</p> <p>5 advised that the website, the</p> <p>6 sciotovalleyguardian.com, had posted an audio</p> <p>7 recording of the testimony of Edward Jacob Wagner";</p> <p>8 is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And so that posting is the use that</p> <p>11 constituted part of the violation of A3; right?</p> <p>12 A. The publication of it?</p> <p>13 Q. Yes. Yeah. I'm just using the word</p> <p>14 "post" because it says "post" here. But either one.</p> <p>15 Post or publication is the basis for the theory that</p> <p>16 it was a use of that document -- of that recording?</p> <p>17 A. The use of the recording that he</p> <p>18 possessed?</p> <p>19 Q. Yes.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And the next paragraph starts out,</p> <p>22 "The ability to record the specific witness, Edward</p> <p>23 Jacob Wagner, was specifically litigated pursuant to</p> <p>24 a motion filed by the media of which Derek Myers was</p>	<p style="text-align: right;">Page 23</p> <p>1 one of the parties represented. The court ruled that</p> <p>2 there was no exception that would permit the media or</p> <p>3 anyone to record the testimony of Edward Jacob Wagner</p> <p>4 as he was deemed a witness with the same right to</p> <p>5 object that any other witness would have."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. So that's the other piece of the A3</p> <p>9 violation; right?</p> <p>10 A. Yeah.</p> <p>11 Q. It violated the statute generally because</p> <p>12 it was recorded contrary to the court reporter order;</p> <p>13 is that right?</p> <p>14 A. The court order and him being a witness</p> <p>15 by the Supreme Court saying that they didn't have to</p> <p>16 be.</p> <p>17 Q. Okay. And so, again, no -- I'm not</p> <p>18 trying to play dumb here. I just want to make sure</p> <p>19 I've got it right. So this violation or alleged</p> <p>20 violation of 2933.52A3 was the sole basis for your</p> <p>21 probable cause; right? In other words, you weren't</p> <p>22 looking at some other statute or something?</p> <p>23 A. It was the statute that I looked at, yes.</p> <p>24 Q. Okay. If we could look -- since it's</p>
<p style="text-align: right;">Page 24</p> <p>1 part of the same document in Exhibit 2, the warrant,</p> <p>2 the first page there. The bond amount there is</p> <p>3 \$20,000?</p> <p>4 A. Yes.</p> <p>5 Q. Is that right? Okay. When this warrant</p> <p>6 was issued, it would be issued by the judge based on</p> <p>7 the content of your probable cause affidavit</p> <p>8 Exhibit 3; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Would the judge also look at the criminal</p> <p>11 complaint, Exhibit 16 or no or not sure?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And if we look quickly at the</p> <p>14 criminal complaint, there it says, "Derek Joel Myers</p> <p>15 did unlawfully and purposely use or attempt to use</p> <p>16 the contents of a wire or oral electronic</p> <p>17 communication."</p> <p>18 Not trying to belabor the point, but same</p> <p>19 thing here; right? The use in mind is the</p> <p>20 publication on Facebook and on the Scioto Valley</p> <p>21 Guardian; is that right?</p> <p>22 A. And his personal --</p> <p>23 Q. His personal website you mean?</p> <p>24 A. Personal Facebook.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. So you have the Guardian's media</p> <p>2 Facebook and then you have his personal Facebook?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Okay.</p> <p>5 A. Yes. Sorry.</p> <p>6 Q. Good job. And here too, the same statute</p> <p>7 at issue; right? Section 2933.52A3?</p> <p>8 A. Yes.</p> <p>9 Q. All right. I'm going to hand you what we</p> <p>10 have marked as Exhibit 8. I'm going to write it on</p> <p>11 there this time. This is the search warrant and</p> <p>12 probable cause affidavit related to Mr. Myers and the</p> <p>13 Guardian's computer. Just take a look at it and see</p> <p>14 if it looks like that is, in fact, what it is to you?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if you go to the last page, so</p> <p>17 it would be numbered Page 4 of the affidavit, can you</p> <p>18 tell me whose signature that is?</p> <p>19 A. Mine.</p> <p>20 Q. And what is the date on that?</p> <p>21 A. October the 28th, 2022.</p> <p>22 Q. So this is the same day that you learned</p> <p>23 about the article; right?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. And the same day that you created the</p> <p>2 incident report?</p> <p>3 A. Yes.</p> <p>4 Q. You would have --</p> <p>5 A. Go ahead. I'll let you question first.</p> <p>6 Sorry.</p> <p>7 Q. You would have created this affidavit</p> <p>8 after the incident report; is that right? In other</p> <p>9 words, you would start the incident report first and</p> <p>10 then you would write up the affidavit?</p> <p>11 A. All I have to do to start an incident</p> <p>12 report is call dispatch --</p> <p>13 Q. Okay.</p> <p>14 A. -- and say I need a report number. That</p> <p>15 starts it.</p> <p>16 Q. Okay.</p> <p>17 A. When I type it up, totally different.</p> <p>18 Could be a week from now, after the investigation,</p> <p>19 before the search warrants. It could be any time.</p> <p>20 Can't tell you specifically when I typed up the</p> <p>21 incident report.</p> <p>22 Q. Okay. So let's go over the dates on the</p> <p>23 incident report, then, up top. So this is time of</p> <p>24 dispatch; right?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Yeah. That's when I called dispatch.</p> <p>2 Q. Okay.</p> <p>3 A. And I said I need an incident number.</p> <p>4 Q. Okay. So that would be the 17:59 time?</p> <p>5 A. Yes.</p> <p>6 Q. And then the next one, time of arrival,</p> <p>7 so what would that be based off of in this case?</p> <p>8 A. I need an incident report.</p> <p>9 Q. Okay. So the simple act of --</p> <p>10 A. All of it can be one time and date.</p> <p>11 Q. So just you calling would generate all</p> <p>12 three of these time and dates?</p> <p>13 A. Yes. Yeah.</p> <p>14 Q. Okay. So but we can say -- other than</p> <p>15 the narrative that was added later -- that the</p> <p>16 incident report was created before the search warrant</p> <p>17 affidavit?</p> <p>18 A. The call for -- I could have been working</p> <p>19 on it all at the same time.</p> <p>20 Q. Sure. So it's fair to say it was either</p> <p>21 before or at the same time? It's not like the</p> <p>22 incident report was created after the fact?</p> <p>23 A. The report number was created on that</p> <p>24 date. I can affirm that.</p>
<p style="text-align: right;">Page 28</p> <p>1 Q. Okay.</p> <p>2 A. I can affirm that I signed this on the</p> <p>3 same date.</p> <p>4 Q. Okay.</p> <p>5 A. So that means I created that on the same</p> <p>6 date. And your other 16, 2, and 3, October the 31st,</p> <p>7 I can state that I created -- of '22 -- that I</p> <p>8 created those items.</p> <p>9 Q. Okay. So the first thing we have a time</p> <p>10 on is the incident report. And as soon as you</p> <p>11 learned of the article, is it fair to say that the</p> <p>12 first of --</p> <p>13 A. I may have started my investigation at</p> <p>14 that point when I learned.</p> <p>15 Q. Okay. So this time stamp on here that</p> <p>16 says 17 --</p> <p>17 A. 59.</p> <p>18 Q. -- 59 would have been when the</p> <p>19 investigation started, essentially?</p> <p>20 A. No. That's when I called dispatch and</p> <p>21 said I need an incident report to start an actual</p> <p>22 report.</p> <p>23 Q. Okay.</p> <p>24 A. Doesn't mean that I started -- I could</p>	<p style="text-align: right;">Page 29</p> <p>1 have started the investigation -- I'd say most likely</p> <p>2 it was for when I put on my thing "October the 28th</p> <p>3 at around 12:39 hours."</p> <p>4 Q. Okay.</p> <p>5 A. That's probably when I started my</p> <p>6 investigation. Because I was informed at that time</p> <p>7 that it was on these websites.</p> <p>8 Q. Okay. So a little after noon. So at</p> <p>9 12:39 in the afternoon, your mom or your dad or</p> <p>10 whoever gets ahold of you and says "Hey, this</p> <p>11 article's online." And you see it. And you see that</p> <p>12 this recording is posted as part of it; right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And then you called dispatch at</p> <p>15 5:59 p.m. to get the incident report started; right?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. So everything -- is it fair to say</p> <p>18 that everything is happening relatively quickly?</p> <p>19 A. Yes.</p> <p>20 Q. So all of the documents that we've looked</p> <p>21 at so far -- that's not a fair question.</p> <p>22 So the incident report, the warrant</p> <p>23 affidavit, were created on the same date; correct?</p> <p>24 On October 28th?</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. The search warrant affidavit? Is that</p> <p>2 what you're talking about? Or the arrest warrant?</p> <p>3 Q. The search warrant affidavit.</p> <p>4 A. Yes.</p> <p>5 MS. SARK: That's not the search warrant.</p> <p>6 It's the -- yep. That's the --</p> <p>7 Q. Very last page?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Great. Now that -- since you have</p> <p>10 that open, let's take a look briefly at the search</p> <p>11 warrant affidavit. So as you pointed at at the top</p> <p>12 of numbered Page 3, it says "On October 28th, 2022,</p> <p>13 at around 12:39 hours" --</p> <p>14 MS. SARK: It's a page before that. Yep.</p> <p>15 A. Well, that's 8. 3 is the affidavit for</p> <p>16 probable cause for arrest.</p> <p>17 Q. Right there.</p> <p>18 A. Oh, the actual Page No. 3. I was</p> <p>19 looking --</p> <p>20 Q. All right. Let me start that over. It</p> <p>21 starts out by saying "On Friday October 28th, 2022,</p> <p>22 at around 12:39 hours"; right?</p> <p>23 A. Yes.</p> <p>24 Q. So, like you said, that's roughly when</p>	<p style="text-align: right;">Page 31</p> <p>1 the investigation started; correct?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And then if you skip down</p> <p>4 one, two, three, the fourth paragraph, it starts out</p> <p>5 talking about the audio recording; right?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Then at the end of the second line, it</p> <p>8 says that "The recording appears to have been</p> <p>9 recorded during Edward Jacob Wagner's testimony</p> <p>10 during one of the days of October 24th, 25, or 26th</p> <p>11 of 2022." Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. And it says Derek Myers was seen in the</p> <p>14 Pike County Court of Common Pleas during this time</p> <p>15 frame; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. So I want to ask you who it was that saw</p> <p>18 Derek Myers in the courthouse during this time frame?</p> <p>19 A. I saw him. I worked security on and off</p> <p>20 throughout the whole Wagner initiative there. And I</p> <p>21 believe the bailiff saw him.</p> <p>22 Q. Okay. Do you know that bailiff's name</p> <p>23 offhand?</p> <p>24 A. Jason Frazier was one of them.</p>
<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. Jason Frazier. And tell me a</p> <p>2 little bit more about -- to the extent you recall --</p> <p>3 which of those dates you were working at the</p> <p>4 courthouse doing security for the Rhoden trial?</p> <p>5 A. I worked security every day. I was part</p> <p>6 of the team that transported. When you saw my</p> <p>7 picture on Mr. Myers thing, I transported him every</p> <p>8 day. Transported -- help transport his brother in.</p> <p>9 Q. Okay. So you would have been at trial --</p> <p>10 is it fair to say you would have been there every day</p> <p>11 at trial?</p> <p>12 A. In and out of the courtroom. Because I</p> <p>13 also run security at this courthouse. I also run our</p> <p>14 corrections department. So --</p> <p>15 Q. So let me ask you this. Would you have</p> <p>16 been there every day in the morning to get him there?</p> <p>17 A. To ensure the safety of our inmates</p> <p>18 getting there, yes.</p> <p>19 Q. And then every evening at the end would</p> <p>20 you be to --</p> <p>21 A. To walk him out. Because I transported</p> <p>22 him back to his -- well, not Jacob but George</p> <p>23 Wagner -- I transported him every day in and out of</p> <p>24 the -- except a few days where I may have been sick</p>	<p style="text-align: right;">Page 33</p> <p>1 for --</p> <p>2 Q. Sure. The defendant in this case, not</p> <p>3 the witness.</p> <p>4 A. Right.</p> <p>5 Q. Okay. So let me ask you about the top of</p> <p>6 Page 4 there. So the very next page. It says</p> <p>7 "Affiant requests a nighttime search warrant"; is</p> <p>8 that right?</p> <p>9 A. Yes.</p> <p>10 Q. And I'm assuming this is the case -- but</p> <p>11 correct me if I'm wrong, did you do this because this</p> <p>12 was late in the day?</p> <p>13 A. Yes.</p> <p>14 Q. And you wanted to get it done that night;</p> <p>15 right?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay.</p> <p>18 A. I was going to say, you see the incident</p> <p>19 was created at 5-something and it was getting dark by</p> <p>20 5:30.</p> <p>21 Q. Right. Right. Now, if you go back to</p> <p>22 the first page of the affidavit for search warrant.</p> <p>23 So it's the numbered page in the middle of this</p> <p>24 packet. Yeah. One more page, which this is</p>

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<p style="text-align: right;">Page 34</p> <p>1 confusingly Exhibit 5. Doesn't make sense. I know.</p> <p>2 But just trust me. It's Exhibit 5 and it's paired</p> <p>3 with Exhibit 8 there. This is an affidavit for a</p> <p>4 search warrant; right?</p> <p>5 A. Yes.</p> <p>6 Q. So the computer itself was already in</p> <p>7 your possession or the sheriff department's</p> <p>8 possession; is that right?</p> <p>9 A. No.</p> <p>10 Q. Okay. Where was it at this time?</p> <p>11 A. It was in the press room that they had</p> <p>12 set up at the Pike County Common Pleas Court.</p> <p>13 Q. Okay. So it hadn't been seized yet.</p> <p>14 But, basically, even though this says it's just a</p> <p>15 search warrant, it's a seize and search warrant</p> <p>16 essentially?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And if we look at the first page</p> <p>19 of this packet --</p> <p>20 A. The actually first page?</p> <p>21 Q. That's right. The actual first page.</p> <p>22 This is the actual search warrant signed by the</p> <p>23 judge; is that right?</p> <p>24 A. Once it circles around to Page 2.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Fair enough. Page 1 and 2 together are</p> <p>2 the actual search warrant signed by the judge; right?</p> <p>3 A. Yes.</p> <p>4 Q. And that was signed by him at -- on</p> <p>5 October 28th; right?</p> <p>6 A. Yes.</p> <p>7 Q. At 19:42 hours; right?</p> <p>8 A. Yes.</p> <p>9 Q. So 7:42 p.m.?</p> <p>10 A. Yes.</p> <p>11 Q. So, again, we've got things moving</p> <p>12 quickly; right? Somewhat shortly after noon you find</p> <p>13 out about the article; right?</p> <p>14 A. Yes.</p> <p>15 Q. At 5:59 the incident report is created?</p> <p>16 A. Call was -- said that I needed a report</p> <p>17 number, yes.</p> <p>18 Q. And here at 7:42 the judge has already</p> <p>19 signed the search warrant; right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. All right. We're going to hand</p> <p>22 you what is marked as Exhibits 12 and 13. 12 is the</p> <p>23 affidavit in support of the search warrant to search</p> <p>24 Mr. Myers's cell phone. And 13 is the actual</p>
<p style="text-align: right;">Page 36</p> <p>1 warrant. If you want to look over those and make</p> <p>2 sure that I'm telling the truth there, that that's</p> <p>3 really what those documents are?</p> <p>4 MS. SARK: No. You're fine. I just</p> <p>5 wanted to make sure it was -- it's for the cell</p> <p>6 phone?</p> <p>7 MR. ROBINSON: I made umpteen copies.</p> <p>8 MS. SARK: Okay. Thank you.</p> <p>9 THE WITNESS: Yes. That's what they both</p> <p>10 appear to be.</p> <p>11 By Mr. Robinson:</p> <p>12 Q. All right. So let's take a look first at</p> <p>13 No. 12, which is the affidavit. It's the -- starts</p> <p>14 on the fourth page of the packet. Yep. Now</p> <p>15 that's -- now that you've found that, let's go to the</p> <p>16 last page of that. What is the date on this</p> <p>17 document?</p> <p>18 A. November the 2nd, 2022.</p> <p>19 Q. And you did not sign this affidavit; is</p> <p>20 that right?</p> <p>21 A. No.</p> <p>22 Q. Who did? Do you know?</p> <p>23 A. That looks like Mr. Wheeler's signature.</p> <p>24 Q. Is his first name Alan?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And he is employed how?</p> <p>3 A. He is an investigator for the Pike County</p> <p>4 Prosecutor's Office.</p> <p>5 Q. Okay. So if we go back to the page prior</p> <p>6 to that, I'll represent to you that most of this is</p> <p>7 taken verbatim from your original probable cause</p> <p>8 affidavit to search the computer.</p> <p>9 A. Yes.</p> <p>10 Q. The fifth paragraph down, the final</p> <p>11 sentence says, "Derek Myers was seen in the Pike</p> <p>12 County Court of Common Pleas during this time frame";</p> <p>13 is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And the time frame referenced, I should</p> <p>16 have said, is October 24th, 25th, or 26th, 2022; is</p> <p>17 that right?</p> <p>18 A. Yes.</p> <p>19 Q. Now, you had said previously that this</p> <p>20 knowledge came from your personal observations and</p> <p>21 also from Bailiff Frazier; right?</p> <p>22 A. At least Bailiff Frazier.</p> <p>23 Q. Does Mr. Wheeler -- did not -- strike</p> <p>24 that.</p>

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<p style="text-align: right;">Page 38</p> <p>1 You're aware that it's permissible to use</p> <p>2 hearsay evidence in a probable cause affidavit;</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. So was it acceptable for Mr. Wheeler to</p> <p>6 use hearsay here, your hearsay, Mr. Frazier's hearsay</p> <p>7 in making this statement that Derek Myers was seen in</p> <p>8 the Pike County Court of Common Pleas during this</p> <p>9 time frame?</p> <p>10 MS. SARK: Objection to form.</p> <p>11 You can answer.</p> <p>12 A. Mr. Wheeler works in the Pike County</p> <p>13 Common Pleas Courthouse on a daily basis and has</p> <p>14 security cameras and monitors in his room. So I</p> <p>15 can't say that he did not see him during that time</p> <p>16 frame.</p> <p>17 Q. Fair enough. And you can't say that he</p> <p>18 did see him by the same token; right?</p> <p>19 A. Same token, no. But I know that he was</p> <p>20 in the courthouse.</p> <p>21 Q. Okay. Mr. Myers's cell phone was seized</p> <p>22 without a warrant; is that right?</p> <p>23 A. I don't know. I was not there.</p> <p>24 Q. Okay. If we could take a look at</p>	<p style="text-align: right;">Page 39</p> <p>1 Exhibit 13, so the first part of this packet. This</p> <p>2 is the search warrant for Mr. Myers's cell phone; is</p> <p>3 that right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. The second page it's dated</p> <p>6 November 2nd, 2022, at 12:14 p.m.; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And judge -- is it Moraleja?</p> <p>9 A. Yeah.</p> <p>10 Q. -- signed it? Okay. So if you go to the</p> <p>11 third page, that's the exhibit page of the search</p> <p>12 warrant; right?</p> <p>13 A. Yes.</p> <p>14 Q. And that appears to be a picture of the</p> <p>15 cell phone; right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell what's lying beneath the</p> <p>18 cell phone?</p> <p>19 A. It's a faraday envelope.</p> <p>20 Q. Okay. Is it --</p> <p>21 A. That's what I call it.</p> <p>22 Q. Sure.</p> <p>23 A. Yeah. It's to keep data from being</p> <p>24 deleted or -- it stops all signals from entering.</p>
<p style="text-align: right;">Page 40</p> <p>1 Q. Sure. So the fact that the cell phone</p> <p>2 was taken -- this picture of a cell phone was taken</p> <p>3 with a faraday envelope indicates it had already been</p> <p>4 seized when this picture was taken; right?</p> <p>5 A. When it was taken, yes.</p> <p>6 Q. Okay. All right. So I've gone through</p> <p>7 all the warrants. And we went over it one other</p> <p>8 time, but I just want to make sure, throughout this</p> <p>9 your probable cause was based on 2933.52A3 and not</p> <p>10 some other statute or section; right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. I want to ask you a couple of</p> <p>13 things about department policies. And mark this</p> <p>14 Exhibit 17.</p> <p>15 - - -</p> <p>16 (EXHIBIT NO. 17 WAS MARKED.)</p> <p>17 - - -</p> <p>18 Q. This isn't a complete manual. But this</p> <p>19 is how this document was produced to us by the</p> <p>20 county. Do you recognize this at all? Does it look</p> <p>21 familiar?</p> <p>22 A. Yes. It looks like it may have come from</p> <p>23 part of our policies and procedures.</p> <p>24 Q. I'm guessing you're probably pretty</p>	<p style="text-align: right;">Page 41</p> <p>1 familiar with that document?</p> <p>2 A. With our policies and procedures, yes.</p> <p>3 Q. Not the most exciting thing in the world,</p> <p>4 I know. But I want to ask you on numbered Page 276</p> <p>5 it says command of -- I'm sorry -- numbered</p> <p>6 Paragraph 6 up at the top. "Command of the warrant</p> <p>7 shall be that the search be made in the daytime</p> <p>8 unless there is urgent necessity for a search at</p> <p>9 night. The reason being stated in the affidavit."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And if you recall, was there</p> <p>13 a reason stated in the affidavit as to why the search</p> <p>14 needed to be conducted at night?</p> <p>15 A. No.</p> <p>16 Q. Okay. If we could go down on that page a</p> <p>17 little bit, you have your Roman numeral VI and then</p> <p>18 big capital B, Number 2. So this is talking about</p> <p>19 information necessary to obtain probable cause for</p> <p>20 search warrant. And one of the sources it says is</p> <p>21 "credible informant information"; is that right?</p> <p>22 "Creditable," I should say. Not "credible."</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And so, I think we're on the same</p>

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<p style="text-align: right;">Page 42</p> <p>1 page here, but here the creditable informants that</p> <p>2 Mr. Myers was in the courthouse at that time would</p> <p>3 have been yourself and Mr. Frazier; right?</p> <p>4 A. Yes.</p> <p>5 Q. And the creditable informant that it was</p> <p>6 published would have been you, because you personally</p> <p>7 saw it published on the social media of the Guardian,</p> <p>8 on Derek Myers's social media page, and on the</p> <p>9 Guardian's own website; right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. If we could flip the page. So up</p> <p>12 top that's that Roman numeral VII, capital A,</p> <p>13 Number 1. So capital A said, "A search warrant shall</p> <p>14 not be issued until there is filed with the judge and</p> <p>15 an affidavit is attached that particularly describes</p> <p>16 the following." Number 1 says, "Background and</p> <p>17 experience information of the affiant."</p> <p>18 So that person with regards to the arrest</p> <p>19 affidavit and the computer affidavit was you; right?</p> <p>20 You were the affiant?</p> <p>21 A. Yes.</p> <p>22 Q. Did either of those documents include a</p> <p>23 narrative of your background and experience</p> <p>24 information?</p>	<p style="text-align: right;">Page 43</p> <p>1 A. That's on file with the court. They know</p> <p>2 what I do.</p> <p>3 Q. Is that information included in those</p> <p>4 documents?</p> <p>5 A. No.</p> <p>6 Q. Okay. All right. If we could go to</p> <p>7 page -- numbered Page 279. Under Roman numeral IX,</p> <p>8 capital letter A. It says, "The sheriff requires</p> <p>9 whenever possible that the detective section</p> <p>10 participates in the preparation and execution of a</p> <p>11 search warrant. They should review the probable</p> <p>12 cause on which the search warrant request is based."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Were you a member of the detective</p> <p>16 section at this time?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Thought so. Did anyone else in</p> <p>19 that section, to the best of your recollection,</p> <p>20 participate in helping you decide whether to request</p> <p>21 these warrants?</p> <p>22 A. Legal counsel for our office.</p> <p>23 Q. Okay. And who would that be?</p> <p>24 A. Currently it's Judge Junk.</p>
<p style="text-align: right;">Page 44</p> <p>1 Q. Who was it at this time?</p> <p>2 A. Judge Junk.</p> <p>3 Q. Okay. Any of his -- were any of his --</p> <p>4 he was then Prosecutor Junk; is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. Did you consult specifically with</p> <p>7 Prosecutor Junk on this case at that time?</p> <p>8 A. Yes.</p> <p>9 Q. Was Mike Davis an assistant prosecutor at</p> <p>10 that time?</p> <p>11 A. Yes.</p> <p>12 Q. Did you consult with him as well, if you</p> <p>13 recall?</p> <p>14 A. No.</p> <p>15 Q. No.</p> <p>16 A. It's also a state prosecutor Angela</p> <p>17 Canepa.</p> <p>18 Q. Okay. So you consulted with her before</p> <p>19 you sought the warrants?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And she advised you that it was</p> <p>22 permissible or advisable to seek those warrants?</p> <p>23 A. All legal counsel.</p> <p>24 Q. Okay. And could you spell her last name?</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Sure could not.</p> <p>2 Q. Okay. Does she work for the Ohio</p> <p>3 Attorney General?</p> <p>4 A. She's special counsel on the Wagner</p> <p>5 cases. So I don't -- I can't say.</p> <p>6 Q. Was she the prosecutor on the Wagner</p> <p>7 cases?</p> <p>8 A. Yes.</p> <p>9 Q. So you consulted -- I'm sorry. Can you</p> <p>10 tell me her name again?</p> <p>11 A. Canepa. Angela Canepa.</p> <p>12 Q. So you consulted with Ms. Canepa and</p> <p>13 Mr. Junk before you sought the warrants in this case?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And they both advised you that you</p> <p>16 should seek those warrants?</p> <p>17 A. They both advised that it was the -- they</p> <p>18 believed it was the violation of that statute.</p> <p>19 Q. Of A3?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So they advised that it was</p> <p>22 permissible to seek the warrants?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And I guess this goes hand in hand</p>

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<p style="text-align: right;">Page 46</p> <p>1 with Point C on there. It says "Whenever possible,</p> <p>2 the search warrant and affidavit should be reviewed</p> <p>3 by the prosecutor"; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And that's what happened here; is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And going right above that, capital B, it</p> <p>9 says "A supervisor will review the search warrant and</p> <p>10 the affidavit to ensure that probable cause exists to</p> <p>11 support the warrant and that the paperwork has been</p> <p>12 properly prepared"; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And did a supervisor to the best of your</p> <p>15 recollection --</p> <p>16 A. I am a supervisor.</p> <p>17 Q. You were the supervisor. Okay.</p> <p>18 A. But I staffed it with Chief Dixon, my</p> <p>19 probable cause, along with informing his direct</p> <p>20 supervisor, the sheriff.</p> <p>21 Q. Okay. So before you got the warrants you</p> <p>22 got clearance from the chief deputy and from the</p> <p>23 sheriff; is that right?</p> <p>24 A. They were informed of my probable cause.</p>	<p style="text-align: right;">Page 47</p> <p>1 I don't have to have clearance if I have probable</p> <p>2 cause to seek that.</p> <p>3 Q. So they were informed of your probable</p> <p>4 cause. And they didn't stop you from proceeding; is</p> <p>5 that right?</p> <p>6 A. That is correct.</p> <p>7 THE WITNESS: Can we have five?</p> <p>8 MR. ROBINSON: Sure. Let's go off the</p> <p>9 record for a minute.</p> <p>10 (Recess taken.)</p> <p>11 By Mr. Robinson:</p> <p>12 Q. All right. Lieutenant Carver, I have</p> <p>13 just a couple more questions for you.</p> <p>14 Did you ever consider issuing a summons</p> <p>15 to Mr. Myers rather than going the arrest warrant</p> <p>16 route?</p> <p>17 A. We do not do summonses for felony</p> <p>18 charges.</p> <p>19 Q. Okay. That's just a blanket policy?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. Could you look at numbered</p> <p>22 Page 378 in that document in front of you, which is</p> <p>23 No. 17 -- Exhibit 17. So at the top of 378 on Roman</p> <p>24 numeral I, capital letter A, it says, "Arrest may</p>
<p style="text-align: right;">Page 48</p> <p>1 take place with or without a warrant. First, the</p> <p>2 officer should consider whether the issuance of a</p> <p>3 summons would suffice instead of a warrant."</p> <p>4 Did I read that correctly?</p> <p>5 A. Which letter are you on.</p> <p>6 Q. Letter -- I'm sorry. Page 378, not 278?</p> <p>7 A. I'm sorry. I thought you said 278.</p> <p>8 Q. My bad. If I did, I was wrong. So we're</p> <p>9 on Page 378, Roman numeral I, capital A. Says</p> <p>10 "Arrests may take place with or without a warrant.</p> <p>11 First, the officers should consider whether the</p> <p>12 issuance of a summons would suffice instead of a</p> <p>13 warrant."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. So your testimony is that despite what</p> <p>17 the manual says, the department's practice is if a</p> <p>18 felony's involved you do not consider a summons, you</p> <p>19 do a warrant?</p> <p>20 A. The corrections department if it's a</p> <p>21 felony, especially with a \$20,000 bond. They do</p> <p>22 not -- I do not allow summonses to be issued.</p> <p>23 Q. Okay. One more thing that we already</p> <p>24 talked about. But I got to thinking I'm not sure the</p>	<p style="text-align: right;">Page 49</p> <p>1 way that we said it was totally clear for the</p> <p>2 transcript. So I want to ask again. We deposed</p> <p>3 Sheriff Evans this morning. And he said, as you</p> <p>4 acknowledged, that he spoke with you about the case.</p> <p>5 I just want to confirm that, in fact, you talked to</p> <p>6 Sheriff Evans -- I just want to confirm the fact that</p> <p>7 you talked to Sheriff Evans about the case before any</p> <p>8 of the warrants were applied for; is that right?</p> <p>9 A. Yes. He was apprised of the situation.</p> <p>10 Q. Okay. Let's see. One more question, I</p> <p>11 believe. So this document I'm not going to introduce</p> <p>12 as an exhibit. It's an email from Ryan Pacala to</p> <p>13 Alan Wheeler talking about Derek Myers's cell phone.</p> <p>14 Do you see the second line of the body? Starting at</p> <p>15 the end of that first line. It says that "The</p> <p>16 passcode contains an alphanumeric pass code."</p> <p>17 A. Uh-huh.</p> <p>18 Q. Do you know what that means? What does</p> <p>19 "alphanumeric" mean?</p> <p>20 A. Numbered or lettered.</p> <p>21 Q. Numbers and letters. Okay. All right.</p> <p>22 That's it. No further questions.</p> <p>23 MS. SARK: You can either read your</p> <p>24 deposition -- you can't change the testimony. But if</p>

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<p>Page 50</p> <p>1 you believe something was taken down incorrectly,</p> <p>2 then you can note that at the end of it. Or you can</p> <p>3 waive. I'm going to go ahead and recommend that we</p> <p>4 waive.</p> <p>5 THE WITNESS: I'd say waive.</p> <p>6 MS. SARK: Okay. We'll waive.</p> <p>7 STENOGRAPHER: Okay. And then does</p> <p>8 anyone need this transcript from today?</p> <p>9 MR. ROBINSON: Yes.</p> <p>10 MS. SARK: I'll need a copy.</p> <p>11 - - -</p> <p>12 Thereupon, at 2:31 p.m., Thursday, August</p> <p>13 29th, 2024, the deposition was completed.</p> <p>14 - - -</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 51</p> <p>1 CERTIFICATE</p> <p>STATE OF OHIO :</p> <p>2 : SS:</p> <p>COUNTY OF JACKSON :</p> <p>3</p> <p>4 I, Kathryn R. Thorne, Shorthand Reporter and</p> <p>5 Notary Public in and for the State of Ohio duly</p> <p>6 commissioned and qualified, do hereby certify that</p> <p>7 the transcript of Joshua Carver was taken by me and</p> <p>8 before me at the time and place for the purpose</p> <p>9 specified in the caption hereof.</p> <p>10 I FURTHER CERTIFY that the foregoing</p> <p>11 transcript of said testimony is a true and correct</p> <p>12 transcript of the testimony given by the said witness</p> <p>13 at the time and place specified herein.</p> <p>14 I FURTHER CERTIFY that I am not a relative or</p> <p>15 employee or attorney or counsel of any of the</p> <p>16 parties, or financially interested directly or</p> <p>17 indirectly in this action.</p> <p>18 Given under my hand this 9th day of September,</p> <p>19 2024</p> <p>20 My Commission expires June 26, 2027</p> <p>21</p> <p>22 <i>Kathryn Thorne</i></p> <p>23 Kathryn Thorne</p> <p>Court Reporter</p> <p>24 Notary Public-State of Ohio</p>
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